U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JAN 14 2013 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (Director), denied the employment-based immigrant visa petition. The petitioner filed a Form I-290B which was rejected and resubmitted as a motion to reopen. The director denied the motion to reopen as untimely. The petitioner then appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a global data center services provider. It seeks to permanently employ the beneficiary in the United States as a manager of internal audit and compliance (BAS manager) pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess the bachelor's degree in accounting, economics, finance, financial management, financial IT, or commerce as required by the terms of the labor certification.

On appeal, counsel states that the beneficiary has a foreign equivalent degree based on her certification by the Further, counsel states that the is an academic institution with the authority to issue degrees, and that the degree issued is equivalent to a U.S. bachelor's degree.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

As a preliminary matter, counsel contends on appeal that the director violated 8 C.F.R. § 103.2(b)(16)(i) by failing to notify the petitioner of derogatory information that it intended to rely upon in denying the petition. The cited regulation requires the director to disclose derogatory evidence "of which the applicant or petitioner is unaware." *Id.* Specifically, counsel states that the director's interpretation of the evidence submitted in this case conflicts with previous AAO decisions. While 8 C.F.R. § 103.3(c) provides that precedent decisions of United States Citizenship and Immigration Services (USCIS) are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). Furthermore, the petitioner has in fact been afforded an opportunity to supplement the record on appeal.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[1]

As previously discussed, the ETA Form 9089 in this case was certified by the DOL. The DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. *See* Section 212(a)(5)(A)(i) of the Act, 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to the DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

The beneficiary possesses a foreign three-year bachelor's degree and membership in ACCA. Thus, the issue is whether that degree and/or certification is a foreign degree equivalent to a U.S. baccalaureate degree. We must also consider whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification.

A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977).[2] This decision involved a petition filed under 8 U.S.C. §1153(a)(3) of the Act, as amended in 1976. At that time, this section provided:

> Visas shall next be made available . . . to qualified immigrants who are members of the professions . . . .

The Immigration Act of 1990 Act added section 203(b)(2)(A) to the Act, 8 U.S.C. §1153(b)(2)(A), which provides:

> Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent . . . .

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[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

[2] In *Matter of Shah* the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Id.* at 245.

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244, is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold an advanced degree or its equivalent. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

At the time of enactment of section 203(b)(2) of the Act in 1990, it had been almost thirteen years since *Matter of Shah* was issued. Congress is presumed to have intended a four-year degree when it stated that an alien "must have a bachelor's degree" when considering equivalency for second preference (advanced degree professional) immigrant visas. We must assume that Congress was aware of the agency's previous treatment of a "bachelor's degree" under the Act when the new classification was enacted and did not intend to alter the agency's interpretation of that term. *See Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) (Congress is presumed to be aware of administrative and judicial interpretations where it adopts a new law incorporating sections of a prior law). *See also* 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (an alien must have at least a bachelor's degree).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the INS responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty). More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *See Matter of Shah*, 17 I&N

Dec. at 245. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[3] In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R. § 204.5(k)(2).

The degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree" (plus evidence of five years of progressive experience in the specialty). For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." The AAO cannot conclude that the evidence required to demonstrate that an alien is an advanced degree professional is any less than the evidence required to show that the alien is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991).[4]

The documentation of record shows that the beneficiary earned the following educational credentials in a Diploma in and membership in the on March 31, 2005, following admission as an affiliate to the having passed the requisite examination.

The transcripts accompanying the beneficiary's Diploma indicate that the beneficiary's degree was three years in duration. As such, it is not considered equivalent to a four-year bachelor's degree in the United States. *See Matter of Shah.* The Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO),

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[3] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

[4] *Cf.* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, *school or other institution of learning* relating to the area of exceptional ability").

which USCIS sometimes consults as a resource to evaluate the U.S. equivalency of foreign educational credentials. According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries." http://www.aacrao.org/About-AACRAO.aspx. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." http://edge.aacrao.org/info.php. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.[5] If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[6]

EDGE indicates that a Diploma in [redacted] is awarded upon completion of two to three years of university study comparable to study at a U.S. college or university for the same number of years. According to EDGE, therefore, the beneficiary's three-year bachelor's degree from Nanyang Polytechnic is most comparable to three years of study at a U.S. college or university. As such, it is not equivalent to a U.S. bachelor's degree.

With regard to the beneficiary's [redacted] credential, EDGE states that [redacted] is:

> Awarded after completion of 3 stages: Foundation, Certificate, and Professional, passing 3 examinations after each stage, and at least 3 years of practical financial experience.

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[5] *See An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/publications/guide_to_creating_international_publications.pdf.

[6] In *Confluence Intern., Inc. v. Holder,* 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano,* 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

http://edge.aacrao.org/country/credential/associateship-of-the-association-of-chartered-certified-accountants-acca?cid=single (accessed January 7, 2013). EDGE states "represents attainment of a level of education comparable to a bachelor's degree in the United States." *Id.*

On appeal, counsel urges us to accept EDGE's conclusion that is equivalent to a U.S. bachelor's degree. The full credential is not based on a four-year educational program, but instead relies on a combination of instruction, practical experience, and examinations. Therefore, the credential does not make the beneficiary eligible for professional classification. The pertinent regulation reads as follows:

> If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. *Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.* To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

8 C.F.R. § 204.5(l)(3)(ii)(C) (emphasis added). The as noted by the NSC Director in his revocation decision, is a membership organization, not a college or university, i.e. a degree-granting institution, and membership in the is not a U.S. baccalaureate or foreign equivalent degree. Accordingly, the beneficiary's membership in does not entitle her to classification as an advanced degree professional under section 203(b)(2) of the Act.

On appeal, counsel argues that any "academic institution" that awards degrees qualifies under the regulation. Counsel then cites the *Oxford English Dictionary* for the proposition that any institution offering any sort of education can be considered a "college or university" under the regulation and that amounts to a qualified educational facility because it offers professional educational courses.

Counsel then states that accreditation of any such educational facility must be made through the government and that possesses a Royal Charter issued by the Queen of England thus making it an accredited institution pursuant to the regulation. The Universities and Colleges Admissions Service (UCAS), the organization responsible for managing applications to higher education courses in the UK, however, does not list as an accredited college or university on its list of educational facilities. *See* http://www.ucas.com/students/choosingcourses/choosinguni/instguide/ (accessed January 8, 2013). The Royal Charter states that the main purpose of is:

> to advance the science of accountancy, financial management and cognate subjects as applied to all or any of the professional services provided by accountants whether engaged in public practice (in partnership or through the medium of a body

> corporate or otherwise), industry and commerce or the public service; to promote the highest standards of competence, practice and conduct among members of the Association so engaged; to protect and preserve their professional independence and to exercise professional supervision over them; and to do all such things as may advance and protect the character of the profession of accountancy whether in relation to public practice (carried on in partnership or through the medium of a body corporate or otherwise) or as applied to service in industry and commerce or the public service.

at paragraph 3 (accessed January 8, 2013). The Royal Charter states that has "ancillary objects and powers" involving education including "to organize, finance and maintain schemes for the granting of diplomas, certificates and other awards" and "to encourage the study of such subjects by providing scholarships …" *Id.* at paragraphs 4(g) and (h). Furthermore, the evidence submitted by the petitioner states that Royal Charters are generally granted to professional memberships and not to academic institutions. *See* http://privycouncil.independent.gov.uk/royal-charters/applying-for-a-royal-charter (accessed January 8, 2013). Although Royal Charters have been granted to academic institutions, Royal Charters are not solely granted to academic institutions. The Royal Charter does not provide with accreditation as an educational institution.

Counsel also states on appeal that is accredited by OfQual and that the partner organization, is accredited in According to its website, "The Office of Qualifications and Examinations Regulation (Ofqual) regulates qualifications, examinations and assessments in England and vocational qualifications in Northern Ireland. We are here to secure the standards of qualifications, and to promote confidence in them. And we are here to ensure that the system works well – that standards are delivered." *See* www.ofqual.gov.uk (accessed January 8, 2013). OfQual does not state that it provides accreditation to educational institutions as opposed to maintaining standards of courses offered and providing public information concerning educational opportunities.

In addition, although may work with nothing has been submitted to demonstrate that the organizations are the same or that any accreditation of one is conferred to the other. The evidence submitted, instead, states that partners with a number of different organizations and has a business relationship with those organizations as opposed to being that organization's operating arm in a different country. In addition, the evidence submitted states that provides preparatory classes in regards to the exam and does not indicate that these preparatory courses are offered in pursuit of a degree as opposed to preparation and organized study for an exam.

As previously discussed, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires that the beneficiary have a U.S. baccalaureate or foreign equivalent degree and evidence thereof in the form of an official college or university record to be eligible for professional classification. The is not an academic institution that can confer a degree with an official college or university record. *See Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 *11 (D. Ore. Nov. 30, 2006) (finding

USCIS was justified in concluding that the Institute of Chartered Accountants of India (ICAI) membership was not a college or university "degree" for purposes of classification as a member of the professions holding an advanced degree). Like the the ICAI is a membership organization, not a college or university, and membership in its organization is not a degree. While the beneficiary's membership in the may be "comparable" to a U.S. bachelor's degree, it is not a "foreign equivalent degree" to a U.S. baccalaureate degree within the meaning of 8 C.F.R. § 204.5(k)(2). Accordingly, they do not entitle her to classification as an advanced degree professional under section 203(b)(2) of the Act.

On appeal, the petitioner reiterates its previous contention that the beneficiary meets the minimum requirement for classification as an advanced degree professional based on her Counsel argues that membership issued by is a "foreign equivalent degree" under the regulations. Counsel cites as an example the secondary school structure of Belgium that does not award bachelor's degrees by that name as an equivalent scenario. Belgium's Licentiaat and Ingenieur degrees, as noted in the EDGE documentation provided by counsel, "are awarded after two-three years of university-level studies" and are equivalent to a U.S. bachelor's degree. As stated above, any degree that is awarded must have originated from an accredited institution; the evidence in the record does not establish that is an accredited academic institution.

Counsel also cites the State Bar of California as an organization authorized by the state to provide education services in the form of continuing legal education and states that as membership in the State Bar of California is predicated upon a juris doctorate degree, the education provided is necessarily post-secondary education. Counsel submitted no evidence to demonstrate that continuing legal education would be accepted by an academic institution in awarding credit nor does counsel submit evidence to demonstrate that the California State Bar is accredited as an educational institution as opposed to a professional regulatory body that provides education as a secondary objective as a function of supporting its membership. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As evidence of the beneficiary's possession of the equivalence of a U.S. bachelor's degree, counsel cites several previously submitted evaluations of the beneficiary's education credentials.

The first evaluation is from dated August 30, 2010, which concludes that the beneficiary's three-year Diploma from and her are equivalent to a Bachelor of Arts degree in Accounting from a U.S. college or university. evaluation states that the beneficiary's studies included general coursework, as well as specialized courses in accounting and taxation. does not undertake a course-by-course analysis or otherwise explain how he reached the conclusion as to their cumulative equivalency in the United States, while ignoring the fact that the foregoing credentials – a three-diploma and – do not include four years of study at a degree-granting institution, the standard length of a U.S. baccalaureate degree. *See Matter of Shah.*

Nor do the subject credentials meet the regulatory definition of a single "United States baccalaureate degree or a foreign equivalent degree" in 8 C.F.R. § 204.5(k)(2).

A second evaluation, dated January 14, 2005, from claims that the combination of the beneficiary's Diploma from is equivalent to a U.S. Bachelor of Science degree in accounting from a U.S. college or university. also notes that the beneficiary's Diploma involved general courses as well as specialized studies in Accounting and Taxation. The evaluation states that the "offers programs comparable to bachelor's programs at universities in the United Kingdom and the United States," but provides no support for this assertion. simply states that the evaluation of the U.S. equivalency of the beneficiary's credential is based on "the reputation of the number of years of coursework, the nature of the coursework, the grades attained in the courses, and the hours of academic coursework, as well as the qualification for Affiliate Membership in " The evaluation does not discuss how long the beneficiary studied at before her final examination. In particular, it does not confirm that the program comprised four academic years, the standard length of a bachelor's degree program in the United States. *See Matter of Shah.* Thus, even if the were a degree-granting institution, the evaluation provides no basis to conclude that the beneficiary's affiliate membership would be equivalent to a U.S. bachelor's degree.

A third evaluation, dated December 20, 2010, is from Professor states that membership in "is generally classified as an academic degree by educational authorities in the United States." concludes that the beneficiary's three-year Diploma is equivalent to three years of U.S. university study, noting like the other reviewers that the beneficiary completed general and specialized coursework. notes that further education is required for and concludes, with no course-by-course analysis, that the required courses are equivalent to U.S. university study. also notes that membership in is accepted by the state boards of accountancy of *most* U.S. states. The AAO does not agree with the conclusion that acceptance of as an equivalent to a U.S. bachelor's degree means that the membership is in and of itself an educational degree. In addition, the acceptance of some state boards of accounting of the as a basis for qualification for licensing in the state does not indicate that the is an educational degree. evaluation does not address the fact that the beneficiary's credentials – a three-year Diploma and - do not include four years of study at a degree-granting institution, the standard length of a U.S. baccalaureate degree. *See Matter of Shah.* Nor do the subject credentials meet the regulatory definition of a single "U.S. baccalaureate degree or a foreign equivalent degree" in 8 C.F.R. § 204.5(k)(2).

A fourth evaluation, dated December 21, 2010, from concludes that is a "degree" under the dictionary definition of the word. Specifically, he cites the *Merriam Webster* definition of "degree," which is "a title conferred on students by a college, university, or professional school on completion of a program of study." acknowledges that the program is not a college or university, but instead classifies it

as a "professional school." He does not offer an explanation how an organization dedicated to the regulation of a profession, such as , could be deemed an education institution under any moniker nor does he analyze the requirement that any sort of educational institution be accredited. notes that EDGE deems as equivalent to a U.S. bachelor's degree and that the beneficiary "completed advanced bachelor's-level studies and examinations in the academic field of Accounting" in pursuit of the specifically analyzed the courses taken by the beneficiary in the program and concluded that since the nine courses were equivalent to university level courses at U.S. universities that the membership awarded was the same as a degree awarded by a U.S. university. He does not explain how a professional regulatory body can be considered a degree-granting institution under the regulations.

Evaluations of a person's foreign education by credentials evaluation organizations are utilized by USCIS as advisory opinions only. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *see also Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Based on the foregoing discussion, the AAO determines that the evaluations submitted have little probative value. They are not persuasive evidence that the beneficiary's credentials – in particular, her three-year diploma and her – are either individually, collectively, or in any combination equivalent to a U.S. bachelor's degree.

For all of the reasons discussed in this decision, the AAO concludes that the beneficiary does not have a foreign equivalent degree to a U.S. baccalaureate degree within the meaning of 8 C.F.R. § 204.5(k)(2). Therefore, she is not eligible for classification as an advanced degree professional under section 203(b)(2) of the Act. Accordingly, the petition cannot be approved.

Beyond the decision of the director, the petitioner has also failed to establish that the beneficiary has the experience required by the terms of the labor certification. To be eligible for approval as an advanced degree professional, the beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House* at 158.

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference [visa category] status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating: "The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu,* 736 F. 2d at 1309.

The key to determining the job qualifications is found in ETA Form 9089, Part H. This part of the application describes the terms and conditions of the job offered. It is important that the application be read as a whole.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In addition to the Bachelor's degree in Accounting, Economics, Finance, Financial Management Financial IT, or Commerce discussed above, Part H requires 72 months of experience as a Manager, Internal Audit & Compliance or the alternate occupations of Accounting/Admin Manager, Finance Manager, Senior Associate or related. Part H provided an alternate combination of education and experience of a Master's degree plus four years of relevant experience.

In Box 14 of the ETA Form 9089 (Specific skills or other requirements), the petitioner stated the following specific skills required for the position:

> Must be a Certified Public Accountant (CPA) or Certified Internal Auditor (CIA); Must have minimum 2 years recent SOX and audit management experience with domestic and international operations, Proficiency with Conformus, or Big 4 Public Accounting Specialized Audit Software; Knowledge of U.S. GAAP; Functional understanding of Oracle ERP; Willing to travel internationally up to 30%.

Box 14 of the Form ETA 9089 also specified that the petitioner would "accept any suitable combination of training, education or experience."

The petitioner does not claim that the beneficiary has a U.S. master's degree or a foreign equivalent degree. With respect to the beneficiary's experience, the petitioner submitted a letter from [redacted] stating that the beneficiary worked as a Senior Associate from April 10, 2005 to August 25, 2007 and a letter from [redacted] stating that the beneficiary worked at [redacted] as a Senior Associate from July 2, 2003 to January 23, 2005 and as an associate from January 2, 2001 to July 1, 2003. Although the total experience claimed by these letters exceeds the 72 months required by the terms of the labor certification, the letter from [redacted] does not meet the regulatory requirements in that it is not written by an employer. *See* 8 C.F.R. § 204.5(g)(1) and (l)(3)(ii)(A). [redacted] states that he was not employed by [redacted] at the time he authored the letter. In addition, the experience listed states that the beneficiary worked as an associate for 18 months of the six and a half years of experience claimed. However, the position of associate was not listed as an approved alternate profession on Part H of the labor certification and, thus, time spent in that profession may not be considered towards the total amount of experience.

In addition to the deficiency in the amount of experience possessed by the beneficiary as of the priority date, we note that Part H Box 14 requires a CPA or CIA certification. The petitioner submitted no evidence to demonstrate that the beneficiary possesses either of these titles. Nor did the evidence submitted demonstrate that the beneficiary had the required two years of experience with Conformus, or Big 4 Public Accounting Specialized Audit Software as required by Part H.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.